

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Investigation on the Commission's Own Motion  
Into the Fatal Accident at the North Street  
Crossing (MP 220.50) in the City of Selma, Fresno  
County, on June 6, 2003, and Order to Show  
Cause Why this Crossing Should Not Be Closed.

Investigation 03-08-017  
(Filed August 21, 2003)

**OPINION APPROVING SETTLEMENT AGREEMENT****Summary**

This order approves a settlement agreement among the City of Selma (Selma), the Union Pacific Railroad Company (UP), and the Rail Crossing Engineering Section of the Consumer Protection and Safety Division (RCES). The agreement, included as the Appendix to today's decision, provides that the North Street crossing shall remain permanently closed.

**Background**

On August 21, 2003, the Commission issued Order Instituting Investigation (I.) 03-08-017 into whether the North Street crossing in the City of Selma should be closed. The Commission took this action in response to the fifth fatal injury accident at the crossing since 1999.

On September 2, 2003, the assigned Administrative Law Judge (ALJ) issued a ruling directing Selma to take all actions necessary to prevent vehicles and pedestrians from using this crossing, pending further order of the Commission. That ruling also set a prehearing conference.

Subsequently, RCES and Selma agreed that the crossing would remain closed and that they would attempt to reach a settlement agreement regarding related issues.

On September 25, 2003, UP filed its motion to intervene in the proceeding, which alleged that UP owns and operates the rail line involved in the North Street Crossing. The ALJ granted the motion at the prehearing conference.

Selma's counsel informed the ALJ by letter dated November 12, 2003, that the parties, including UP, had not yet reached a settlement agreement, and that they would like an additional 60 days to continue negotiations. The letter also stated that the parties would like to conduct a joint corridor and/or consolidation study of all crossings in Selma.

On January 22, 2004, a prehearing conference was held and the parties informed the ALJ that they had reached an agreement in principle that resolved all issues in the proceeding. The parties also stated that they had considered all crossings in Selma's rail corridor and determined that closing this crossing would be the best means to enhance overall safety in the entire corridor. The parties requested additional time to reduce the agreement to a written joint stipulation and file it. On February 2, 2004, the parties filed their Joint Stipulation, a copy of which is the Appendix to today's decision.<sup>1</sup>

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<sup>1</sup> Consequently, no hearings are necessary and we revise our preliminary determination on the need for hearing contained in the OII.

**Description of the Joint Stipulation**

The Joint Stipulation resolves all issues raised in this investigation and closes the North Street crossing permanently.

To implement the closure, Selma shall remove the street asphalt from the new end of North Street up to two feet from the edge of the rail on both sides of the crossing. Selma shall maintain the existing traffic barriers, a wooden plank barrier and concrete “k-rail” barrier, on both sides of the closed crossing for five years or until other barriers, such as landscaping, are established that achieve the same barrier purpose. Selma shall also install curb and gutters parallel to the crossing. Selma may seek reimbursement for its expenses from state or federal programs, and RCES shall cooperate and assist in that effort.

With Commission approval, UP will remove the concrete crossing panels near the rails and the signalized warning devices from the crossing.

Finally, all parties to the Joint Stipulation agreed to waive their right to comment on a draft decision approving the Joint Stipulation.

**Discussion**

Although the parties have entitled their agreement a “Joint Stipulation,” it is substantially equivalent to a settlement agreement, and we will apply the rules for evaluating settlement agreements. Commission Practice and Procedure Rule 51.1(e) provides that, prior to approval, the Commission must find a settlement “reasonable in light of the whole record, consistent with the law, and in the public interest.”

The Joint Stipulation permanently closes a dangerous crossing where five fatalities have occurred. Closure was one of the objectives of

the Commission's OII. It is a reasonable outcome in light of the record of fatalities.

The Commission's policy and legal precedent favor closure of at-grade crossings. *See Pasadena Metro Blue Line*, Decision 02-05-047. The Joint Stipulation will close an at-grade crossing, and thus, is consistent with the law.

Finally, this agreement furthers the public interest by closing an unsafe at-grade crossing. In sum, we find the terms of the Joint Stipulation to be reasonable, consistent with the law and in the public interest, and we approve it.

### **Comments on Draft Decision**

All parties have waived their right to comment on the draft decision. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is waived.

### **Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. After diligent and good faith negotiations, the parties resolved all issues in this proceeding.
2. On February 2, 2004, the parties asked the Commission to approve their Joint Stipulation, and waived their right to comment on a draft decision.
3. The Joint Stipulation provides for the permanent closure of the North Street crossing.

**Conclusions of Law**

1. The standard of review applicable to settlements, found in Rule 51.1(e), should be applied to the Joint Stipulation.
2. The terms of the Joint Stipulation are reasonable, consistent with the law, and in the public interest.
3. The Commission should approve the Joint Stipulation.
4. The Commission should authorize UP to remove the concrete crossing panels and signalized warning devices from the crossing.
5. To ensure immediate implementation of the Joint Stipulation, this decision should be effective on the date it is signed.
6. No hearings are necessary.

**O R D E R**

**IT IS ORDERED** that:

1. The Joint Stipulation among the City of Selma, the Union Pacific Railroad Company (UP), and the Rail Crossing Engineering Section of the Consumer Protection and Safety Division, as set forth in the Appendix, is approved. The parties shall comply with the terms of the Joint Stipulation.
2. UP is authorized to remove the concrete crossing panels and signalized warning devices from the crossing.
3. No hearings are necessary.
4. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## **APPENDIX**

[APPENDIX A to I0308017 Bushey](#)